



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 10/804,140 | 03/19/2004 | Michael C. Webb | 37356-195204 | 6392 |
| 23973 | 7590 | 10/04/2005 | | |
| DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996 | | | EXAMINER JACYNA, J CASIMER | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3751 | |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|-----------------------------|--|
| Office Action Summary | Application No. 10/804,140 | Applicant(s) WEBB ET AL. | |
| | Examiner J. Casimer Jacyna | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/19/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-13 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03252005</u> . | 6) <input type="checkbox"/> Other: _____ |

1. Applicant's election with traverse of group 1, an inductive device in the reply filed on 9/19/2005 is acknowledged. The traversal is on the ground(s) that the claims are not patentably distinct. This is not found persuasive because Poleshuk clearly discloses a generic proximity sensor 20 on a holster that senses the presence or absence of a fuel nozzle. If there is no patentable distinction between the species, then the Poleshuk reference will anticipate all of the devices. If Applicant maintains that there is no patentable distinction between the species, then a reference which show any one of the devices, such as an ultrasonic device, will reject all of the devices including the inductive, capacitive and photoelectric devices, even though there are material structural differences between the devices. Or, with the Poleshuk reference, since Poleshuk discloses an inductive sensor 20, this inductive sensor will anticipate the ultrasonic and photoelectric devices even though an inductive device does not include any capacity to generate ultrasonic waves or a photoelectric signal. However, if Applicant desires to maintain that there is no patentable distinction, the restriction requirement will be withdrawn.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 4-6 and 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 9/19/2005.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

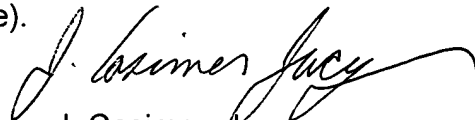
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 7-13 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Poleshuk. Poleshuk discloses a fuel dispenser including a fueling hose 31, a fueling nozzle 81, a nozzle holster 51, a proximity sensor 20 that senses the presence or absence of the nozzle 81, a generic electrode as claimed and as are either of the coils used in the disclosed embodiments and an inductive device as is the pulse induction sensor the disclose of which begins on col. 5, line 50.
5. Claims 1, 2, 8-12, 17, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith. Smith discloses a fuel dispenser including a fueling hose 23, a fueling nozzle 22, a nozzle holster 12, a proximity sensor 36 that senses the presence or absence of the nozzle 22 and a generic electrode as claimed 30, 34.
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nanaji discloses another fuel dispenser with a proximity sensor in the holster.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Wed. thru Fri. 9AM-7PM, Mon. 7AM-1PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 703-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Casimer Jacyna
Primary Examiner
Art Unit 3751

JCJ